



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,079	08/15/2001	Gary L. Mengeu	035373-00104	9573

7590 05/01/2003

Richard V. Westerhoff  
Eckert Seamans Cherin & Mellott, LLC  
44th Floor  
600 Grant Street  
Pittsburgh, PA 15219

[REDACTED] EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
3727	5

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/930,079	MENGUE ET AL.
	Examiner Niki M. Eloshway	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 February 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 10-13 is/are rejected.
- 7) Claim(s) 5-9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Montgomery (U.S. 5,738,231). Montgomery teaches a container 12 and a closure 18. The container 12 has a main body at lead line 12, a spout at 16 and an upwardly and outwardly flared portion at 32 in figure 5. The closure 18 has an end wall 20, and a skirt 22 which extends outwardly and downwardly as shown in figures 3 and 5. The sealing elements include a sealing flange 36 which extends downwardly and inwardly at the upper, radially outer portion thereof. The annular upper portion is inclined downwardly and outwardly relative to the outer surface of the annular sealing flange between lead lines 40 and 22 in figure 4.

### ***Allowable Subject Matter***

3. Claims 5-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

4. Applicant's arguments filed February 20, 2003 have been fully considered but they are not persuasive. On page 2 of the Response filed February 20, 2003, Applicant argues that "Montgomery

Art Unit: 3727

does not have a spout which extends upwardly and inwardly as called for in Claim 1.” The Examiner disagrees with this position the spout is element 16, above the closure engaging member 28, which extends upwardly and inwardly in the area at 30 and 32 in figure 3.

5. Also on page 2 of the Response filed February 20, 2003, Applicant argues that Montgomery does not teach an annular upper portion of the inner surface of the skirt inclined downwardly and outwardly relative to the outer surface of the annular sealing flange, as set forth in claim 1. The examiner also disagrees with this position. As stated in the rejection above, the annular upper portion is inclined downwardly and outwardly relative to the outer surface of the annular sealing flange between lead lines 40 and 22 in figure 4. In other words, the annular upper portion comprises elements 40 and 22. At the lower portion of element 22, which is considered to be part of the annular upper portion, the inside surface extends outwardly and downwardly until it converges with the inner surface of the skirt.

6. On page 3 of the Response (2/20/03), Applicant argues that “the projection 40 [of Montgomery] does not form ‘an annular sealing flange extending downwardly and inwardly from the end wall of the closure.’” Element 40 of Montgomery is considered to be part of the annular upper portion. The annular sealing flange is considered to be element 36 of Montgomery. Element 36 of Montgomery extends downwardly and inwardly at the upper portion of the radially outer surface thereof.

7. Applicant also argues that Montgomery does not teach an outer skirt which extends downwardly and outwardly from a periphery of the end wall of the closure. The examiner disagrees with this position. The outer skirt of Montgomery, as shown in figures 1-5, is flared outwardly as it extends from the periphery of the end wall.

8. Applicant argues that “the annular flange 32 is not wedged into an upwardly converging annular gap between the projection 40 and a downwardly and outwardly inclined inner surface of the

Art Unit: 3727

downwardly and outwardly extending skirt", on page 3 of the Response (2/20/03). The examiner disagrees with this position. As shown in figure 4 of Montgomery, the annular flange at 32 is wedged into an upwardly converging annular gap at lead line 32 between the annular upper portion and the annular sealing flange, as set forth in applicant's claim 1. The annular gap is bounded by elements 22 and 40 (annular upper portion) on the radially outer side and elements 38 and 42 (annular sealing flange) on the radially inner side. The annular upper portion extends downwardly and outwardly at 22 and the annular sealing flange extends downwardly and inwardly at 38.

9. Please note that the initial closing operation and engagement of the Montgomery invention (shown in figure 4) are used to meet the limitations of the rejected claims since the pending claims of the present application do not set forth that the function occurs during post initial opening applications of the closure.

10. Regarding claims 10-12, Applicant argues that Montgomery does not teach an annular sealing member on one of the lower end of the inner surface of the skirt and the main body of the container. The examiner disagrees with this position. The annular sealing member is considered to be element 22 which is located on the closure above the container engaging members.

### *Conclusion*

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

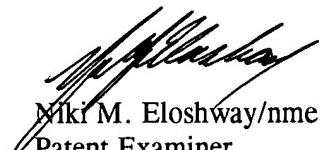
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from

Art Unit: 3727

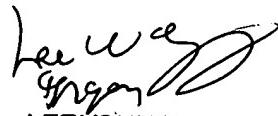
the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.



Niki M. Eloshway/nme  
Patent Examiner  
April 25, 2003



LEE YOUNG  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700